

House File 748 - Introduced

HOUSE FILE 748
BY COMMITTEE ON LABOR

(SUCCESSOR TO HSB 248)

(COMPANION TO SF 361 BY
COMMITTEE ON LABOR AND
BUSINESS RELATIONS)

A BILL FOR

- 1 An Act concerning private sector employee drug testing.
- 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 730.5, subsection 1, paragraph j, Code
2 2021, is amended to read as follows:

3 j. "*Safety-sensitive position*" means a ~~job~~ position
4 designated by the employer as one wherein an accident could
5 cause loss of human life, serious bodily injury, or significant
6 property or environmental damage, including a job with duties
7 that include immediate supervision of a person in a job that
8 meets the requirement of this paragraph.

9 Sec. 2. Section 730.5, subsection 7, paragraph j,
10 subparagraph (1), Code 2021, is amended to read as follows:

11 (1) If a confirmed positive test result for drugs or
12 alcohol for a current employee is reported to the employer
13 by the medical review officer, the employer shall notify the
14 employee in writing delivered in person, by certified mail,
15 return receipt requested, or by electronic notification of
16 the results of the test, the employee's right to request and
17 obtain a confirmatory test of the second sample collected
18 pursuant to paragraph "b" at an approved laboratory of the
19 employee's choice, and the fee payable by the employee to the
20 employer for reimbursement of expenses concerning the test.
21 The fee charged an employee shall be an amount that represents
22 the costs associated with conducting the second confirmatory
23 test, which shall be consistent with the employer's cost for
24 conducting the initial confirmatory test on an employee's
25 sample. If the employee, in person, ~~or~~ by certified mail,
26 return receipt requested, or by electronic notification,
27 requests a second confirmatory test, identifies an approved
28 laboratory to conduct the test, and pays the employer the fee
29 for the test within seven days from the date the employer
30 delivers in person, mails by certified mail, return receipt
31 requested, or delivers electronically the written notice to the
32 employee of the employee's right to request a test, a second
33 confirmatory test shall be conducted at the laboratory chosen
34 by the employee. The results of the second confirmatory test
35 shall be reported to the medical review officer who reviewed

1 the initial confirmatory test results and the medical review
2 officer shall review the results and issue a report to the
3 employer on whether the results of the second confirmatory test
4 confirmed the initial confirmatory test as to the presence of
5 a specific drug or alcohol. If the results of the second test
6 do not confirm the results of the initial confirmatory test,
7 the employer shall reimburse the employee for the fee paid by
8 the employee for the second test and the initial confirmatory
9 test shall not be considered a confirmed positive test result
10 for drugs or alcohol for purposes of taking disciplinary action
11 pursuant to [subsection 10](#).

12 Sec. 3. Section 730.5, subsection 9, paragraph a,
13 subparagraphs (1) and (2), Code 2021, are amended to read as
14 follows:

15 (1) Drug or alcohol testing or retesting by an employer
16 shall be carried out within the terms of a written policy which
17 has been provided to every employee subject to testing, and is
18 available for review by employees and prospective employees.
19 If an employee or prospective employee is a minor, the employer
20 shall provide a copy of the written policy to a parent of the
21 employee or prospective employee and shall obtain a receipt or
22 acknowledgment from the parent that a copy of the policy has
23 been received. Providing a copy of the written policy to a
24 parent or minor in person, by certified mail, return receipt
25 requested, or by electronic notification shall satisfy the
26 requirements of this subparagraph.

27 (2) In addition, the written policy shall provide that any
28 notice required by [subsection 7](#), paragraph "j", to be provided
29 to an individual pursuant to a drug or alcohol test conducted
30 pursuant to [this section](#), shall also be provided to the parent
31 of the individual in person, by certified mail, return receipt
32 requested, or by electronic notification if the individual
33 tested is a minor.

34 Sec. 4. Section 730.5, subsection 15, Code 2021, is amended
35 to read as follows:

1 15. *Civil remedies.*

2 ~~a.~~ This section may be enforced through a civil action.

3 ~~(1)~~ a. A person who violates this section or who aids
4 in the violation of this section is liable to an aggrieved
5 employee or prospective employee for affirmative relief
6 including reinstatement or hiring, with or without back pay,
7 or any other equitable relief as the court deems appropriate
8 including reasonable attorney fees and court costs. An
9 aggrieved employee or prospective employee has the burden of
10 proving by clear and convincing evidence that a violation of
11 this section directly caused any damages for which affirmative
12 relief is sought.

13 ~~(2)~~ b. When a person commits, is committing, or proposes to
14 commit, an act in violation of this section, an injunction may
15 be granted through an action in district court to prohibit the
16 person from continuing such acts. The action for injunctive
17 relief may be brought by an aggrieved employee or prospective
18 employee, the county attorney, or the attorney general.

19 ~~b.~~ In an action brought under this subsection alleging that
20 an employer has required or requested a drug or alcohol test
21 in violation of this section, the employer has the burden of
22 proving that the requirements of this section were met.

23 EXPLANATION

24 The inclusion of this explanation does not constitute agreement with
25 the explanation's substance by the members of the general assembly.

26 This bill relates to Code section 730.5, concerning private
27 sector employee drug testing.

28 Under current law, "safety-sensitive position", for purposes
29 of Code section 730.5, is defined as a job wherein an accident
30 could cause loss of human life, serious bodily injury, or
31 significant property or environmental damage, including a job
32 with duties that include immediate supervision of a person
33 in a safety-sensitive position. The bill provides that the
34 definition applies to positions designated as safety sensitive
35 positions by the employer.

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1 The bill provides that various notifications required under
2 current law to be provided by certified mail, return receipt
3 requested, can also be provided in person or by electronic
4 notification.

5 The bill provides that attorney fees awarded to an aggrieved
6 employee or prospective employee as part of affirmative relief
7 in a civil action for a violation of Code section 730.5 must
8 be reasonable. In such an action, the bill provides that
9 an aggrieved employee or prospective employee has the burden
10 of proving by clear and convincing evidence that a violation
11 of Code section 730.5 directly caused any damages for which
12 affirmative relief is sought.

13 The bill strikes language providing that in a legal action
14 alleging that an employer has required or requested a drug or
15 alcohol test in violation of Code section 730.5, the employer
16 has the burden of proving that the requirements of Code section
17 730.5 were met.